

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

**HARPER-HUTZEL HOSPITAL,
A WHOLLY OWNED SUBSIDIARY OF
THE DETROIT MEDICAL CENTER
d/b/a MICHIGAN ORTHOPAEDIC SPECIALTY
HOSPITAL¹**

Employer

and

CASE 7-RD-3496

ANN B. QUIGLEY, An Individual

Petitioner

and

**AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES
(AFSCME), AFL-CIO, MICHIGAN COUNCIL 25,
LOCALS 181, 3695 AND 140²**

Union

APPEARANCES:

Shaun Ayer, Attorney, of Detroit, Michigan, for the Employer
Ann B. Quigley, of Warren, Michigan, pro se
Richard Mack, Attorney, of Detroit, Michigan, for the Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

¹ The name of the Employer appears as amended at hearing.

² The name of the Union appears as amended at hearing.

Upon the entire record in this proceeding³, the undersigned finds:

1. The hearing officer's ruling are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Overview

The Employer (MIOSH) is part of The Detroit Medical Center (DMC). DMC consists of several hospitals in the metropolitan Detroit area. It is comprised of Children's Hospital (downtown Detroit), Hutzel Hospital (downtown Detroit), Detroit Receiving Hospital (downtown Detroit), Karmanos Cancer Hospital (downtown Detroit), Sinai-Grace Hospital (northwestern Detroit), Harper Hospital (downtown Detroit), Rehabilitation Institute of Michigan (Warren, MI) and the Employer (Madison Heights, MI).

For many years, the Union has represented units of service and maintenance employees at Children's Hospital (276 employees), Hutzel Hospital (227 employees), Detroit Receiving Hospital (339 employees), and at The Detroit Medical Center's corporate offices (96 employees) located within Detroit Receiving Hospital. The Union also represents 16 unit clerks at the Karmanos Cancer Hospital. The Hospital Employees Division of Local 79, Service Employees International Union (Local 79) also represents units of service and maintenance employees at DMC facilities: Sinai-Grace Hospital (382 employees), Harper Hospital (384 employees), Rehabilitation Institute of Michigan (88 employees) and at DMC's corporate offices.⁴ Since 1999, DMC, the Union and Local 79 have jointly administered one collective bargaining agreement. The current joint operating agreement (JOA) is effective from January 1, 2003 through December 31, 2005. In 2004, the Employer voluntarily recognized the Union as the collective bargaining representative of the Employer's approximately 36 service and maintenance employees.

³ The Union filed a brief, which was carefully considered. The Union also filed a post-hearing Stipulation to Correct the Record. The Stipulation is in regard to the allocation of membership dues for the employees among the International Council 25, and Local 3695. The Stipulation was agreed to by the Employer and Petitioner. I treat the Stipulation as a motion to correct the record and grant the motion.

⁴ Local 79 was served with a copy of the petition, the notice of hearing, and the order rescheduling the hearing. No Local 79 representative appeared at the hearing.

The Issue

The Petitioner seeks a decertification election for only the unit of MIOSH employees represented by the Union. The Union argues that the MIOSH employees are not a separate bargaining unit, contending that these employees have been irrevocably amalgamated into the larger bargaining unit. It asserts that the appropriate unit for a decertification petition is all the employees covered by the parties' joint operating agreement. The Employer takes no position in this matter.

For the reasons set forth below, I find that the MIOSH unit has merged with the overall unit covered under the parties' joint operating agreement.

The Evidence

Each employer hospital within DMC has its own budget, and local hospital management determines its staffing needs. Each hospital president reports to Mary Zuckerman, the executive vice president of DMC. Local management makes the ultimate decisions regarding discharges and it processes grievances at the first and second steps. The local human resources representatives process grievances at the third step, and sometimes these representatives will assist their counterparts at other DMC facilities.⁵ DMC corporate personnel process grievances at the arbitration stage. Payroll for all facilities is handled by the DMC corporate office.

Prior to 1999, the employer hospitals of DMC had been signatory to six separate contracts with the Union and Local 79. In 1999, the parties decided to combine the six units into one unit and they negotiated a single JOA. The unit description for all employees covered under the joint operating agreement, as stipulated by the parties, was as follows:

All full-time, regular part-time, and contingent: unit clerks employed at the Karmanos Cancer Hospital; service employees employed at the Sinai-Grace Hospital; and service and maintenance employees employed at Children's Hospital, Hutzel Women's Hospital, Hutzel Health Center-Warren, Detroit Receiving Hospital/University Health Center, Harper University Hospital and Rehabilitation Institute of Michigan, including the classifications of BMET, electrician plant operations associate I, plumber, refrigeration mechanic, refrigerator operator, stationary engineer, carpenter, plant operations associate II, instrument associate, plant operation assistant, heavy equipment operator, anesthesia aide, ECG associate, EEG associate, nurse extender,

⁵ The vice president of human resources for DMC may offer assistance to local human resource representatives during the grievance procedure.

patient support associate, rehabilitation services aide, telemetry associate, unit clerk, central supply associate, cook, dietary aide, housekeeping aide, materials management clerk, material handler, transporter, mover, plant operation apprentice and dietary clerk; but excluding all supervisors, executives, professionals, technicals, clericals, LPN's, students other than those filling bargaining unit classifications, guards as defined in the Act, and all other employees.

On August 1, 2002, DMC purchased Madison Hospital in Madison Heights, Michigan. DMC renamed the facility the Michigan Orthopaedic Specialty Hospital and, in March 2003, it transferred its existing orthopaedic surgery unit from Hutzel Hospital to MIOSH. The record does not reflect the number of employees transferred from Hutzel Hospital to MIOSH at that time. Hutzel employees who chose not to accept positions at MIOSH bid on other positions within the DMC pursuant to the procedures within the joint operating agreement.

MIOSH initially was a nonunion facility. However, on April 16, 2003, DMC, the Union and Local 79 signed a Letter of Understanding stating that "it is agreed that the DMC will voluntarily recognize (no NLRB election) the JOA Unions at Madison Heights upon presentation of signed authorization cards totaling 50% plus (1) of the service employees. The employees will be folded into the JOA classifications without need of bargaining." This Letter of Understanding was later incorporated into the parties' current collective bargaining agreement, which, although retroactively effective on January 1, 2003, was signed and dated February 12, 2004.

Local 3695 of AFSCME represents employees at Hutzel Hospital. Several Hutzel employees transferred to MIOSH when DMC shifted the orthopaedic specialty to MIOSH in 2003. As a result, the Union and Local 79 agreed that the Union could attempt to organize the MIOSH employees. The Union assigned Local 3695 to that unit.

In May 2003, Union representatives visited MIOSH to gather the requisite number of signed authorization cards. Before MIOSH employees signed their authorization cards, the Union informed them that Local 3695 would be assigned as their collective bargaining representative. It is unclear from the record what else, if anything, Union representatives told MIOSH employees regarding integration into the overall bargaining unit.

The Union submitted the requisite number of authorization cards to the Employer on May 29, 2003. On October 1, 2003, the Union requested negotiations regarding the MIOSH employees. The Employer refused the Union's request to bargain and the Union filed an unfair labor practice charge in Case 7-CA-46085 on October 30, 2003. On February 26, 2004, the Region issued a

Complaint and Notice of Hearing in that case. Thereafter, on March 23, 2004, the Employer informed the Union, by letter, that it was voluntarily recognizing the Union as the MIOSH employees' collective bargaining representative, effective May 23, 2004. The MIOSH unit, as stipulated by the parties, is as follows:

All full-time, regular part-time and contingent service and maintenance employees, including cooks, dietary aides, housekeeping aides, instrument associates, plant operation associates 1's and unit clerks, employed by Michigan Orthopaedic Specialty Hospital located at 30671 Stephenson Highway, Madison Heights, Michigan; but excluding all office clerical employees, professional employees, technical employees, and guards and supervisors as defined in the Act, and all other employees.

Following the grant of recognition, the Employer and the Union placed the MIOSH employees in the bargaining unit set forth in the JOA. They also bargained to adjust MIOSH employees' wages, days off, and seniority rights to comport with the terms of the JOA.

The parties negotiated the following agreements: MIOSH employees in classifications that earned higher wages under the joint operating agreement received wage increases up to the JOA rates. They also received 32 weeks backpay. This agreement was designed so that MIOSH employees were paid the same wages they would have earned had they been working under the joint operating agreement as of August 17, 2003. The record does not indicate why that date was selected. MIOSH employees earning more than their comparable classifications under the joint operating agreement kept their higher hourly rate. Additionally, the Employer converted MIOSH employees from the combined time off (CTO) schedule to the terms spelled out in the joint operating agreement, namely separate allocations for sick, vacation, and personal leave days, as well as holidays. The MIOSH employees ended up with approximately two additional days of leave. The record indicates that all MIOSH employees were given seniority dates as of their date of hire at DMC, Madison Hospital, or MIOSH. Finally, one employee was classified in a position not contained within the JOA unit description. His classification was changed to an included classification.

After the Employer and Union reached agreement on the terms for the MIOSH employees, those employees, 37, between September 17 and October 1, 2004, received and signed for a copy of the JOA. On October 8, Union representatives met with MIOSH employees to fully explain the terms of the negotiated agreement. The Union reviewed the terms of the joint operating agreement, spelled out all benefits, wages, including wage increases and retroactive backpay, and seniority provisions in the agreement. It then held a ratification vote amongst the bargaining unit employees. It appears that 22 employees attended. Twenty, a majority of the total number of MIOSH unit employees, ratified the agreement.

MIOSH employees receive all of the benefits negotiated in the current joint operating agreement. They file grievances with their appointed steward, and he submits the grievances to the appropriate supervisor. This same protocol is followed at all the other DMC facilities. Additionally, all employees may transfer to and from any of the DMC facilities covered under the joint operating agreement, including MIOSH. Since ratifying the terms of the joint operating agreement, at least two employees have transferred into MIOSH from other DMC facilities. One of them transferred from Sinai-Grace Hospital, from a unit represented by Local 79. A small number of employees have also transferred from MIOSH into other DMC facilities. Transfers are done through bidding and bidding is open to all employees covered under the joint operating agreement. Successful bidders take their seniority with them to the new facility. There is one master seniority list for all employees covered under the joint operating agreement. MIOSH employees are included on this list. There is no seniority list specific only to MIOSH. All employees may also work extra hours and shifts at other DMC facilities, per the other facilities' staffing needs; this is called shared employment.

Analysis

As a general rule, the bargaining unit in which a decertification election is held must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *Mo's West*, 283 NLRB 130 (1987). However, parties to a collective-bargaining relationship may, by contract, bargaining history, and course of conduct, merge existing certified or recognized units into a single appropriate unit. A merger of two or more units has the effect of destroying the separate identity of the prior recognized or certified units. *White-Westinghouse Corp.*, 229 NLRB 667, 672 (1977); *Albertson's Inc.*, 307 NLRB 338 (1992).

I find that there is ample evidence that the Employer and Union agreed to immediately merge the MIOSH unit into the existing unit already set forth in the JOA. In that regard, the April 16, 2003, Letter of Understanding expressly stated that after recognition of the Union by the Employer, the MIOSH employees would be folded into the joint operating agreement. See *W.T. Grant Co.*, 179 NLRB 670 (1969); *Green-Wood Cemetery*, 280 NLRB 1359 (1986). After recognition was granted, the parties abided by the Letter of Understanding. The MIOSH employees' wage rates were modified to comport with the wage structure of the JOA. Further, one seniority list covers all DMC employees and these employees are eligible to transfer into and out of any facility, including MIOSH, according to the bidding protocol outlined in the joint operating agreement. Compare *Duke Power Co.*, 191 NLRB 308, 312 (1971) (no irrevocable amalgamation of three steam plants into a larger systemwide unit where seniority was done by classification at each plant and there was no formal transfer of employees from one plant to another).

It is unclear whether MIOSH employees knew they would be part of the overall unit at the time they signed union authorization cards. However, they clearly knew that they were being merged into the overall unit when they ratified the negotiated agreement on October 8, 2004. At this ratification vote, Union representatives outlined the terms of the joint operating agreement, as well as the specific wage and seniority provisions the Union negotiated on behalf of MIOSH employees. Employees knew that they were assigned to Local 3695 and that they would be working under the same terms and conditions of employment as all of DMC's other union-represented employees. Employees digested this information and voted to ratify the terms of the negotiated agreement. *Compare Duke Power Co.*, supra at 312 (1971) (employees were not given the choice whether they wished to be associated with the larger, systemwide unit when they selected the union as their collective bargaining representative in a Board-conducted election). Employees had ample opportunity to object to the terms of this agreement or their merger into the larger unit. They could have voted down the agreement or filed a decertification petition. Neither step was taken. Nothing was done until this decertification petition was filed a year later.

In *Wisconsin Bell*, 283 NLRB 1165 (1987), a case similar to this one, a unit of 8 employees was merged by the employer and union into a larger preexisting unit 11 days after Board certification of the smaller unit. A decertification petition was filed for the 8 employee unit 20 months later at the expiration of the contract. The Board dismissed the petition on the basis that the smaller unit had been merged into the overall larger unit. The same conclusion applies here.

Conclusion

Based upon the foregoing and the record as a whole, I conclude that the MIOSH unit has irrevocably merged with the overall bargaining unit covered by the parties' joint operating agreement. As a result, an election only for the MIOSH portion of the overall unit is not appropriate and I shall dismiss the petition.

ORDER

IT IS ORDERED that the petition is dismissed.⁶

Dated at Detroit, Michigan, this 20th day of December, 2005.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
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Detroit, Michigan 48226

⁶ Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Frankin Court, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by January 3, 2006.